

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HEALTH

In the Matter of North Ridge Care Center –
Survey Date: June 10, 2011

RECOMMENDED DECISION

The above matter was the subject of an independent informal dispute resolution meeting conducted by Administrative Law Judge Raymond R. Krause on October 5, 2011, beginning at 9:30 a.m., at the Office of Administrative Hearings. The meeting concluded on that date.

Mary Cahill, Christine Campell and LuAnn Page, appeared on behalf of the Minnesota Department of Health (the Department). Kim Pederson, Bev Ransford, Dr. John Mielke, and Jessica Hormann appeared on behalf of North Ridge Care Center.

Title 42 CFR 488.331 requires that there be offered to skilled nursing facilities, nursing facilities, and dually participating facilities an informal opportunity to dispute cited deficiencies upon the facility's receipt of the official Form CMS-2567.

In Minnesota, Minn. Stat. §144A.10 provides for an independent informal dispute resolution process for cited deficiencies. That process was implemented in this matter.

Based upon the exhibits submitted and the arguments made and for the reasons set out in the Memorandum that follows, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

That the citation with regard to F-309 be supported in full.

Dated: October 11, 2011

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

NOTICE

Under Minn. Stat. § 144A.10, subd.16(d)(6), this recommended decision is not binding on the Commissioner of Health. Under Department of Health Information Bulletin 04-07, the Commissioner must mail a final decision to the facility indicating whether or not the Commissioner accepts or rejects the recommended decision of the Administrative Law Judge within 10 calendar days of receipt of this recommended decision.

MEMORANDUM

Pursuant to the survey conducted at the North Ridge Care Center (NRCC) exiting on June 10, 2011, NRCC was cited for a deficiency with respect to F309. The deficiency was issued at a scope and severity of G, an isolated deficiency that results in a negative outcome that has compromised the resident's ability to maintain and/or reach his or her highest practicable physical, mental and psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.

The intent of regulation F-309 is essentially to ensure the resident does not deteriorate for reasons that are avoidable. Part of that determination deals with pain management. The regulation requires that a facility must do several things in order to help a resident prevent or manage pain. First, the facility must recognize when the resident is experiencing pain and identify circumstances when pain can be anticipated. Second, the facility must evaluate the existing pain and the cause. Third, the facility must manage or prevent the resident's pain in a manner consistent with the resident's plan of care and preferences.

A component of pain recognition is the necessity of an initial evaluation and ongoing assessments. The ongoing assessments should be done in a manner that accounts for different causes of pain. For example, a resident may have minor or no pain at rest but significant pain in motion. One assessment of the patient at rest will not necessarily help determine levels or causes of pain in motion.

Resident 444 was admitted with various ailments including limited mobility, limited speech and recognition capacity due to a stroke, arthritis and diabetes. Resident 444 is sometimes able to respond by a simple yes or no or by nods or shakes of the head. His responses are not always accurate. His right arm and hand have limited mobility and the right hand is in a clenched position at rest.

The initial evaluation showed that he had some pain when the arm and/or hand were in motion but no pain at rest. Acetaminophen was prescribed three times a day and as needed. No ongoing assessments were done while he was in motion except for the motion involved during physical therapy. During physical therapy he experienced pain. This is normal and indicates to the therapist when to stop expanding the range of motion. The therapist stated that the level of pain suffered by Resident 444 during therapy had not increased or decreased significantly over time.

The survey found that Resident 444 also had signs of pain while sitting at dinner and when being dressed or washed. During the survey interviews, he and his significant other admitted that he had ongoing pain, especially when being washed or dressed.

No assessment was done by the facility to determine the extent of his pain when in motion other than the time in physical therapy.

Resident 444's pain level was not raised as an issue by the resident or his significant other during the quarterly reviews. The facility staff did not, for the most part, see his pain increase or decrease except during therapy. On several occasions, Resident 444 was asked if he needed more acetaminophen and he indicated that he did not.

Ultimately, the fact is that the facility did not conduct a pain assessment while Resident 444 was in motion. The staff could not, therefore, know what the base level of pain was when in motion, or whether anything might be able to be done to lessen it. Even during physical therapy the pain might have been able to be reduced somewhat but still allow for the diagnostic use of pain to determine the optimum therapy.

It is possible that the pain regimen utilized by NRCC was exactly what was called for. It may well be that Resident 444 experienced no harm from the actions or omissions of NRCC. However, because the necessary assessments were not done, there is no baseline and we simply do not know. We do know that he was experiencing ongoing pain.

"Actual harm...may include...persisting or recurring pain and discomfort related to failure to recognize, assess, or implement interventions for pain." This regulatory definition of F-309 fits the facts as related by the parties and, therefore, the deficiency should be affirmed.

R. R. K.